

ENDORSED
FILED
ALAMEDA COUNTY

FEB 4 - 2014

CLERK OF THE SUPERIOR COURT
By Lynetta M. Irvin, Deputy

1 Alan L. Schlosser (SBN 49957)
2 Michael Temple Risher (SBN 191627)
3 Kimberly Ann Horiuchi (SBN 214869)
4 Novella Coleman (SBN 281632)
5 American Civil Liberties Union
6 Foundation of Northern California, Inc.
7 39 Drumm Street, San Francisco, CA 94111
8 Telephone: (415) 621-2493
9 Facsimile: (415) 255-8437
10 Email: mrisher@aclunc.org; aschlosser@aclunc.org

11 Oren Sellstrom (SBN 161074)
12 Meredith Desautels Taft (SBN 259725)
13 Joanna Elise Cuevas Ingram (SBN 290011)
14 Lawyers' Committee for Civil Rights
15 131 Steuart Street, Suite 400, San Francisco, CA 94105
16 Telephone: (415) 543-9444, Ext. 207
17 Facsimile: (415) 543-0296
18 Email: osellstrom@lccr.com; mdesautels@lccr.com;
19 jcuevasingram@lccr.com

20 Attorneys for Plaintiffs

21 *Additional counsel listed on following page.*

22 SUPERIOR COURT OF CALIFORNIA
23 COUNTY OF ALAMEDA

24 **Michael Scott,**
25 **Leon Sweeting,**
26 **Martin Cerda,**
27 **All of Us or None,**
28 **League of Women Voters of California,**
Dorsey Nunn, and
George Galvis,

Plaintiffs,

v.

Debra Bowen, Secretary of State of
California;

Defendant.

CASE NO.: **RG14712570**

**Verified petition for writ of mandate
and complaint for declaratory and
injunctive relief: Violation of Cal.
Const. Art. II § 2 and Administrative
Procedure Act**

1 **Additional Counsel:**

2 Jesse Stout (SBN 284544)
3 Legal Services for Prisoners with Children
4 1540 Market Street, Suite 490
5 San Francisco, CA 94102
6 Telephone: (415) 625-7049
7 Facsimile: (415) 552-3150
8 Email: jesse@prisonerswithchildren.org

9 Lori L. Shellenberger (SBN 154696)
10 American Civil Liberties Union of San Diego and Imperial Counties
11 P.O. Box 87131
12 San Diego, CA 92138
13 Telephone: (619) 398-4494
14 Facsimile: (619) 232-0036
15 Email: lshellenberger@acluca.org

16 Robert Rubin (SBN 85084)
17 Law Office of Robert Rubin
18 315 Montgomery St., 10th Fl.
19 San Francisco, CA 94104
20 Telephone: (415) 434-5118
21 Email: robertrubinsf@gmail.com

1 Plaintiffs allege as follows:

2 I. INTRODUCTION

3
4 1. Every adult Californian has a constitutional right to vote except while
5 “imprisoned or on parole for conviction of a felony” or mentally incompetent. Cal. Const.
6 Art. II, §§ 2, 4. But Defendant Bowen has, by administrative fiat, expanded this voting
7 exclusion to include people who are neither imprisoned nor on parole but are on new
8 forms of community supervision created by California’s 2011 Criminal Justice
9 Realignment Act. As a direct result of this unilateral action, more than 58,000
10 Californians have been wrongfully disenfranchised.

11
12 2. In late 2011, Secretary of State Bowen issued a memorandum to all local
13 elections officials instructing them that people on the new categories of criminal-justice
14 supervision that the Legislature had created earlier that year are ineligible to vote. The
15 Legislature created these new categories of criminal-justice supervision -- “mandatory
16 supervision” and “post-release community supervision” (“PRCS”) -- as innovative
17 community-based *alternatives* to parole for persons recently incarcerated for low-level,
18 non-serious felonies; people on these forms of supervision are not on parole, which is
19 now reserved for people convicted of more serious crimes.

20
21
22 3. The express goal of the Realignment Act is to reduce recidivism and
23 successfully reintegrate people convicted of low-level felonies back into the community.
24 The purpose of mandatory supervision and PRCS is to better manage the needs of this
25 population through evidence-based programming. Unlike persons on parole, persons on
26 mandatory supervision and PRCS are not supervised or under the control or jurisdiction
27

1 of the state prison system, but rather are supervised solely by local county officials and
2 courts.

3 4. The disenfranchisement at issue in this case stems from a December 5, 2011
4 memorandum sent by Defendant to county elections officials (Secretary of State County
5 Clerk/Registrar of Voters Memorandum No. 11134, hereinafter, "Secretary's
6 Memorandum," a true copy of which is attached to this complaint as Exhibit A). The
7 Secretary's Memorandum instructs all county elections officials in the state that
8 persons on mandatory supervision or PRCS are ineligible to vote. Based on this
9 Memorandum, the Secretary has created voter registration forms and informational
10 materials that also prevent these individuals from voting.

11 5. Plaintiffs include three individuals who are directly harmed by the
12 Secretary's actions, as well as organizations and taxpayers that work to protect voting
13 and other civil rights in California.

14 6. Defendant's actions have unlawfully expanded the constitutional exclusion
15 and thereby stripped the right to vote from persons who plainly do not fall within its
16 express terms. This unlawful disenfranchisement stands in direct conflict with the long-
17 standing constitutional presumption in favor of protecting the right to vote, as well as
18 the policies underlying the Legislature's dramatic changes to the state's criminal justice
19 system in 2011 to create new non-parole alternatives intended to facilitate successful
20 reentry for people convicted of low-level offenses. Voting is a civic duty, and prohibiting
21 people who are living in the community under these new forms of community
22 supervision from participating in this critical part of our democracy serves no useful
23 purpose and is likely to impede re-integration and rehabilitation into civil society.

1 7. Furthermore, Defendant violated the California Administrative Procedure
 2 Act by issuing the Memorandum without complying with the APA's notice-and-
 3 comment requirements. These requirements are meant to ensure that people who will
 4 be affected by a government rule or policy can have a voice in its creation and to
 5 provide, as our supreme court has put it, some security against "bureaucratic tyranny."
 6 By issuing the Memorandum and related materials without complying with the APA,
 7 the Secretary has effectively disenfranchised tens of thousands of Californians without
 8 giving them -- or any other member of the public -- any opportunity to object. This is
 9 precisely the type of unilateral rulemaking that the APA is designed to prevent.

10
 11
 12 8. Plaintiffs seek mandamus, declaratory, and injunctive relief to ensure that
 13 individuals participating in these new, community-based programs of non-parole
 14 supervision are no longer denied their fundamental right to vote.

15
 16 **II. JURISDICTION AND VENUE**

17 9. This Court has jurisdiction under article VI, section 10, of the California
 18 Constitution and California Code of Civil Procedure § 410.10.

19 10. Venue in this Court is proper because this is an action against the Secretary
 20 of State in her official capacity for acts she performed as part of her public duties that
 21 caused, and will continue to cause, legal injuries and deprivation of rights to persons,
 22 including Plaintiffs, in Alameda County. *See id.* §§ 393(b), 395(a). In addition, because
 23 the Secretary resides in Sacramento and is unlawfully spending taxpayer funds in that
 24 county, venue in this Court is proper because the California Attorney General
 25 maintains an office in Alameda County. *Id.* §§ 393(b), 395(a), 401(a).

1 III. PARTIES

2 **Plaintiffs**

3 11. Plaintiff Michael Scott lives in San Francisco with his wife. Mr. Scott works
4 full time. He is on PRCS and expects to continue on it until at least the end of the year.
5 Mr. Scott would like to be able to register and vote while he is on PRCS without putting
6 himself in danger of being accused of committing a crime or violating the terms of his
7 release. He is 52 years old, a U.S. Citizen, and otherwise eligible to vote.
8

9
10 12. Plaintiff Leon Cole Sweeting is a resident of California who would like to
11 vote but expects to be on PRCS through at least the end of 2014 after his February 21,
12 2014 release from the San Francisco jail. Mr. Sweeting has voted before and would like
13 to be able to register and vote while he is on PRCS without putting himself in danger of
14 being accused of committing a crime or violating the terms of his release. He is an adult
15 U.S. Citizen and is otherwise eligible to vote.
16

17
18 13. Plaintiff Martin Cerda is a resident of California who would like to vote but
19 expects to be on mandatory supervision through at least the end of 2014 after his
20 February 20, 2014 release from the San Francisco jail. He would like to be able to
21 register and vote while he is on mandatory supervision without putting himself in
22 danger of being accused of committing a crime or violating the terms of his release. He
23 is an adult U.S. Citizen and is otherwise eligible to vote.
24

25 14. Plaintiff All of Us or None ("AOUON") is a project of Legal Services for
26 Prisoners with Children, a nonprofit organization that advocates for incarcerated
27 parents, their family members, and people at risk for incarceration. AOUON was
28

1 founded in Oakland; it has members in Oakland and other cities in Alameda County
2 and its Oakland-Bay Area chapter continues to meet regularly in Oakland. AOUON is
3 dedicated to fighting discrimination against people who have been incarcerated.
4
5 AOUON works to inform individuals with convictions of their voting rights and leads
6 voter education, outreach, and registration efforts throughout California, including
7 Alameda County.

8
9 15. Plaintiff League of Women Voters of California (“LWVC”) is a nonpartisan
10 political organization with over 7,500 members in 67 local and regional chapters
11 throughout the state, many of whom are assessed and pay state taxes annually. LWVC
12 encourages informed and active participation in government, works to increase
13 understanding of major public policy issues, and influences public policy through
14 education and advocacy. As part of LWVC’s work to increase voter registration and
15 participation in elections, local Leagues of Women Voters conduct voter education and
16 registration efforts throughout the state, including Alameda County. LWVC signed the
17 ballot argument in support of the initiative that amended the California Constitution in
18 1974 to expand the right to vote to all Californians not in state prison or on parole.
19
20

21 16. Plaintiff Dorsey Nunn is the Executive Director of Legal Services for
22 Prisoners with Children and the co-founder of All of Us or None. He has worked on
23 issues relating to the rights of formerly incarcerated people for decades. Mr. Nunn has
24 received numerous awards, including a Certificate of Special Congressional Recognition
25 from House Speaker Nancy Pelosi and the Senate Certificate of Recognition by Senator
26 Jackie Speier. He is also a recipient of the Fannie Lou Hamer Award from the African-
27
28

1 American Studies Department at the University of California, Berkeley. Mr. Nunn is a
2 California taxpayer and has been assessed and paid taxes, including state income tax,
3 to the State within the last year.
4

5 17. Plaintiff George Galvis is the Executive Director of Communities United for
6 Restorative Youth Justice, an organization that works to motivate and empower young
7 people who have been impacted directly and indirectly by the criminal justice system to
8 make positive changes in their lives. He is a member of All of Us or None and a
9 recipient of the 2013 California Peace Prize from the California Wellness Foundation.
10 He is a California taxpayer and has been assessed and paid taxes, including state
11 income tax, to the State within the last year. Mr. Galvis lives in Alameda County.
12
13

14 **Defendant**

15 18. Defendant Debra Bowen is the Secretary of the State of California and the
16 chief elections officer of the state. She is responsible for ensuring voter registration and
17 voter participation in every election, protecting the right to vote of every Californian
18 who is eligible to vote, and seeing that state election laws are enforced. She prints and
19 is responsible for the language on the voter registration affidavits used throughout the
20 state, and oversees the administration of and the drafting of the language contained on
21 the state's online voter registration system. She is named in her official capacity only.
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. STATEMENT OF FACTS

A. The Constitutional and Statutory Framework

19. Under article II, section 2 of the California Constitution, every “United States citizen 18 years of age and resident in this State may vote,” except those specifically excluded by other constitutional provisions. For many years, a conviction for an “infamous crime” resulted in lifetime disenfranchisement under the California Constitution. In 1974, however, the voters of California approved Proposition 10, expanding the franchise to allow persons to vote who have been convicted of a felony, except while they are “imprisoned, or on parole.” Cal. Const. Art. II, § 4. In 2006, the Court of Appeal confirmed that this disenfranchising provision does not extend to people under probation supervision following conviction for a felony. *League of Women Voters of California v. McPherson*, 145 Cal.App.4th 1469, 1484 (2006).

20. The common denominator of the two categories of people convicted of felonies who remained disenfranchised after the enactment of Proposition 10 was that the people in each category were still serving their prison terms under the jurisdiction of the California Department of Corrections (“CDC”) (renamed the California Department of Corrections and Rehabilitation or “CDCR,” in 2005). Under the Indeterminate Sentencing Law in place in 1974 when Proposition 10 was adopted, parole was a part of the indeterminate state prison term imposed by the court, with the CDC having the sole discretion as to whether and when a prison inmate would be released to serve the remainder of their term on parole, in constructive rather than actual custody. People on parole remained under the constructive custody of the state prison system during the period of parole. It was the CDC that set the terms for parole.

1 Its agents had exclusive jurisdiction to supervise people on parole and the decision to
2 revoke parole was made solely by parole agents and the Board of Prison Terms.
3 Furthermore, the consequences of revocation of parole were that the constructive
4 custody reverted to actual custody in a state prison for the remainder of the term. In
5 addition, most of these parolees had been convicted of serious crimes: in fact, the
6 majority of individuals on parole in 1974 had been convicted of just four very serious
7 crimes: homicide, rape, robbery, or burglary.¹
8

9
10 21. Significant increases in criminal sentences enacted either legislatively or
11 through initiative, including the passage and implementation of the Determinate
12 Sentencing Law in 1977, combined with the failure of the system to prepare inmates to
13 reintegrate into society after release, caused the state's prison and parole populations to
14 skyrocket. By the end of 2010, just before the passage of Realignment, California's
15 prison population had soared from 24,741 in 1974 to 162,821 and its parole population
16 from 11,549 to 107,667.² This huge increase far outpaced the state's population growth
17 of 21.2 million to 37.3 million over this same time period.³ It occurred even though the
18 crime rates for both violent and non-violent crimes were much lower in 2010 than they
19
20

21
22 ¹ California Dep't of Corrections, *California Prisoners 1974 and 1975* at 100-01, available at
23 <https://www.ncjrs.gov/pdffiles1/Digitization/47791NCJRS.pdf> . All websites last visited between
January 27 and January 31, 2014.

24 ² *Id.* at 1, 2, 96-100; California Dep't of Corrections and Rehabilitation, *Corrections: Year at a*
25 *Glance 2011* at 12, available at
http://www.cdcr.ca.gov/News/docs/2011_Annual_Report_FINAL.pdf).

26 ³ Cal. Dep't of Justice, *Crime in California 2012* at 62 (table 49) , available at
27 <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf>
28

1 were in 1974.⁴ And in sharp contrast with 1974, this much larger parole population
2 included many more – and a much higher percentage of – persons convicted of low-level
3 crimes: by 2010, only 18.1% of persons on parole had been convicted of the four serious
4 crimes that made up more than half the parole population in 1974.⁵

6 **The Legislature’s 2011 Enactment of Criminal Justice Realignment**

7 22. In 2011, the California Legislature enacted Realignment, dramatically
8 changing the criminal justice system in the State. The central purpose of Realignment
9 was to reverse a 25-year trend of putting more and more people convicted of low-level
10 offenses in prison and on parole, and then cycling them back into prison for parole
11 violations. The legislative goal was to “improve public safety outcomes among adult
12 felons and facilitate their reintegration back into society” by “realigning low-level felony
13 offenders who do not have prior convictions for serious, violent, or sex offenses to locally
14 run community-based corrections programs” instead of prison or parole. Penal Code
15 § 17.5(a)(5).⁶

16
17
18 23. Following Realignment, thousands of individuals continue to be placed on
19 parole. Currently, there are more than 47,000 persons on parole in California, which is
20 _____

21
22 ⁴ The violent crime rate in 2010 was 439.3 crimes per 100,000 population; in 1974, it was 602. For
23 property crimes, the 2010 rate was 2,630.1, much less than half the 1974 rate of 6137.7. *Crime in
California 2012, supra* note 3, at 6 (table 1).

24 ⁵ Homicide 1.5%, robbery 6.3%, rape 0.4%, and burglary 9.9%. California Dep’t of Corr. and
25 Rehab., *California Prisoners & Parolees 2010* at 63, available at
http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd2010.pdf.

26 ⁶ All statutory references are to the Penal Code unless otherwise noted.

1 four times as many as were on parole in 1974.⁷ However, Realignment also created two
2 new legal categories of community supervision for people convicted of low-level offenses
3 after their release from local or state custody. Qualifying people with low-level offenses
4 released from a local jail are under “mandatory supervision,” while qualifying people
5 with low-level offences released from state prison are under “post-release community
6 supervision” (“PRCS”). Both categories are overseen by local county probation
7 departments and superior courts. As of March 31, 2013, there were 6,252 persons on
8 mandatory supervision, and 33,579 persons on PRCS in California.⁸

9
10
11 24. Under Realignment, parole remains within the jurisdiction and control of
12 the CDCR. The parolee population remains in the custody of the CDCR, and includes
13 only individuals convicted of serious and violent felonies; those serving an
14 indeterminate Three Strikes sentence; and those classified as high-risk sex offenders or
15 mentally-disordered offenders. § 3000.08(a)(1)-(5). Persons on parole for murder or for
16 certain sex offenses are still returned to state prison for parole violations. § 3000.08(h).
17 The CDCR still sets parole conditions and supervises people on parole throughout the
18 state. §§ 3000.08(a), 3056(a).
19
20
21

22
23 ⁷ See CDCR, *Weekly Report Population as of Midnight January 22, 2014*, available at
24 [http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TP
OP1A/TPOP1Ad140122.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TP
OP1A/TPOP1Ad140122.pdf)

25 ⁸ See Chief Prob. Officers of Cal., *California Realignment Dashboard*,
26 <http://www.cpoc.org/assets/Realignment/dashboard.swf>. As of that same date, a cumulative total of
27 46,080 Californians had been released onto PRCS, and 11,756 had been given a sentence that
28 included a period of mandatory supervision. *See id.* This is the last date listed on the website.

1 25. Mandatory supervision and PRCS were created as statutory alternatives to
2 parole in order to carry out the goals of Realignment and to give persons convicted of
3 low-level felonies an opportunity to reenter society as they return to their local
4 communities. They are innovative programs of community-based supervision. The
5 participants are all people convicted of low-level offenses who have completed their
6 term of incarceration and are living in the community. They are under the jurisdiction
7 and supervision of the superior court and the county probation department. Unlike
8 parolees, they have no connection or interaction with the state prison system or the
9 CDCR.
10

11 26. **Mandatory Supervision.** Under Realignment, persons convicted of non-
12 serious, non-violent, non-sex offenses are sentenced to county jail, not to state prison.
13 § 1170(h). The court may choose to suspend execution of part of this jail term so that the
14 defendant will be released from jail and placed on mandatory supervision for the
15 remainder of the term. § 1170(h)(5)(B)(i), (ii). People on mandatory supervision are
16 “supervised by the county probation officer in accordance with the terms, conditions,
17 and procedures generally applicable to persons placed on probation.” § 1170(h)(5)(B)(i).
18 Any proceedings to revoke a grant of mandatory supervision are conducted under the
19 same statutes and procedures that apply to probation violations. § 1170(h)(5)(B)(i). A
20 violation may result in a return to local custody. The superior court retains jurisdiction
21 over the individual under mandatory supervision and has the sole authority to
22 terminate supervision early. § 1170(h)(5)(B)(i).
23
24
25

26 27. **Post-Release Community Supervision (PRCS).** Individuals whose current
27 offense is a non-serious, non-violent, non-sex-related offense but who were either
28

1 sentenced before the enactment of Realignment or whose prior record makes them
2 ineligible to be sentenced pursuant to Penal Code section 1170(h) are no longer placed
3 on parole when they leave state prison; instead, they are placed on PRCS. *See* § 3451(a).
4 PRCS is not part of the state prison term; instead, it is a period of supervision that
5 occurs “after ... a prison term” has been completed. *Id.* PRCS is administered by county
6 probation officials. Each county’s board of supervisors is required to create a PRCS
7 supervision strategy and designate a county agency to implement it. § 3451(c). Every
8 county has designated its probation department to do this. County probation
9 departments are therefore responsible for supervising each person on PRCS. § 3454(a).
10 If the probation department determines that the supervisee is not complying with his
11 PRCS conditions, it may impose sanctions or, when appropriate, file a petition to revoke
12 or modify release with the superior court, under the same provisions that apply to
13 petitions to revoke a probationary sentence. §§ 3454(b), 3455(a). Individuals on PRCS
14 are not under the jurisdiction of CDCR and therefore cannot be sent to state prison for
15 violations of PRCS. §§ 3457, 3458.

19 **B. In 2005 and Again in 2011, the Secretary of State Acted in Violation of the**
20 **Constitution by Seeking to Disenfranchise Thousands of Californians Who Are**
21 **Neither in Prison nor on Parole.**

22 28. In 2005, the California Secretary of State issued a memorandum to local
23 elections officials declaring that individuals who were on felony probation and confined
24 in county jails as a condition of probation were not eligible to vote. This summary
25 disenfranchisement of thousands of Californians was reversed by the Court of Appeal,
26 which ruled that persons who are on felony probation and under the jurisdiction of the
27 court rather than the prison system are in fact eligible to vote; the Court held that
28

1 article II, section 4 applies only to “those who have been imprisoned in state prison or
2 who are on parole as a result of the conviction of a felony.” *League of Women Voters of*
3 *California*, 145 Cal. App. 4th at 1486.

4
5 29. In December 2011, after the passage of Realignment, Defendant again
6 issued a memorandum to county clerks and registrars of voters that attempted to
7 disenfranchise persons based on an overbroad reading of the terms of article II, section
8 4. This new memorandum, which lies at the heart of this case, instructs county
9 elections officials and others that people on mandatory supervision and PRCS, the two
10 new programs created by Realignment, are not eligible to vote because these categories
11 of supervision are the “functional equivalent” of parole. *See Exhibit A, Secretary’s*
12 *Memorandum*, at 7, 11-13.

13
14 30. Defendant issued this Memorandum without going through the notice-and-
15 comment procedure of the California Administrative Procedure Act.

16
17 31. Defendant disseminates and implements her unlawful expansion of the
18 narrow exception contained in article II, section 4 of the California Constitution in a
19 number of ways. For example, Defendant’s official website lists Californians who are
20 “[o]n parole, mandatory supervision, or post release community supervision” as “Not
21 Eligible” to vote (Exhibit B).⁹ The Secretary’s newly minted administrative version of
22 the constitutional prohibition is also reflected in the paper voter registration affidavits
23

24
25 ⁹ Cal. Sec’y of State, *Voting Rights for Californians with Criminal Convictions or Detained in Jail or*
26 *Prison*, available at <http://www.sos.ca.gov/elections/sharing-ideas/a-voting-guide-for-inmates.pdf> .
27 A true copy of this webpage is attached to this complaint as Exhibit B. *Accord*
28 <http://www.sos.ca.gov/elections/sharing-ideas/voting-rights-californians.htm>.

1 written, printed and distributed by Defendant, which requires applicants to swear
2 under penalty of perjury that they are not “serving a sentence for a felony pursuant to
3 subdivision (h) of Penal Code section 1170, or on post release community supervision.”
4 A true copy of the Secretary’s June 2013 Registration Form, is attached to this
5 complaint as Exhibit C.
6

7 32. The Secretary also informs voters and officials of this purported restriction
8 on voting rights in her official statewide voting guide, a true copy of which is attached to
9 this complaint as Exhibit D, as well as through her voter-information hotlines and
10 communications to the Administrative Office of the Courts, county elections officials,
11 and the Department of Corrections regarding the information county elections officials
12 need to maintain accurate voter files.
13

14 33. Because the Defendant is our state’s chief elections official, county elections
15 officials follow her interpretation of the state’s elections law. For example, Alameda
16 County recently confirmed that it follows the determination in the Secretary’s
17 Memorandum that otherwise-eligible Californians on PRCS or mandatory supervision
18 cannot vote. A true copy of a January 21, 2014 letter from the Alameda County
19 Counsel’s office confirming this is attached to this complaint as Exhibit E.
20

21 34. This disenfranchisement of thousands of formerly incarcerated people who
22 are not on parole is contrary to the intent of the Legislature and to fundamental
23 principles of our democracy. Allowing persons on mandatory supervision and PRCS to
24 vote would increase their civic participation and promote a sense of inclusion in the
25 larger society, thus facilitating their successful post-incarceration reentry into the
26 community. Because the legal rationale behind felony disenfranchisement is not to
27
28

1 punish formerly incarcerated people but to preserve the integrity of elections, and
2 because there is no empirical or rational connection between being on mandatory
3 supervision or PRCS and a propensity to commit election fraud, Defendant's expansion
4 of disenfranchisement beyond parole is inconsistent with both the plain language and
5 the intent underlying the constitutional exclusion and serves no public purpose.
6

7 35. Because of Defendant's Memorandum and actions based on it, AOUON and
8 LWVC cannot in good faith inform people on mandatory supervision or PRCS that they
9 can register to vote or assist them in doing so because AOUON, LWVC, and their staff
10 would risk prosecution, as would the people they had assisted. *See Elec. Code*
11 *§ 18100(a)*.
12

13 36. Plaintiffs Scott, Sweeting, and Cerda are denied the right to vote as a result
14 of Defendant's issuance and implementation of the Secretary's Memorandum. They
15 would like to register and vote while they are on PRCS or mandatory supervision but do
16 not want to risk prosecution for registering and voting illegally. *See Elec. Code*
17 *§§ 18100(a), 18560(a)*. Nor do they want to commit perjury by completing the
18 Secretary's current registration affidavit, which requires them to certify that they are
19 not on PRCS or serving a sentence under *§ 1170(h)*. *See Complaint Ex. C*.
20

21 37. In 2012, Plaintiffs AOUON and LWVC filed a writ of mandate petition with
22 the California Court of Appeal and then a petition for review with the California
23 Supreme Court, seeking review of issues raised by the Secretary's Memorandum. *See*
24 *All of Us or None et al v. Bowen*, No. A134775 (Cal. Ct. App. 1st Dist.) (2012). Both
25 courts declined to address the merits and instead summarily denied the petitions.
26
27
28

1 38. Plaintiffs now seek review from this Court to determine the voting rights of
2 the tens of thousands of Californians who are on mandatory supervision or on PRCS
3 and for those who will be similarly situated in the future.
4

5 **V. REQUISITES FOR RELIEF**

6 39. Defendant has a non-delegable, non-discretionary duty to provide all eligible
7 California voters an opportunity to vote pursuant to article II § 2 of the California
8 Constitution, and to comply with the procedures set forth in the California
9 Administrative Procedure Act, Govt. Code § 11340 *et seq.* Plaintiffs are each
10 beneficially interested in Defendant's performance of her legal duties with respect to
11 the constitutional rights protected under the California Constitution and the
12 requirements of the Administrative Procedure Act.
13

14 40. Defendant's unlawful and unconstitutional conduct has caused and, unless
15 enjoined by this Court, will continue to cause irreparable injury to Plaintiffs.
16

17 41. Plaintiffs lack a plain, speedy, and adequate remedy at law for the harms
18 they suffer and will continue to suffer as a result of Defendant's unlawful and
19 unconstitutional actions.

20 42. An actual controversy has arisen and now exists between the parties
21 relating to the legal rights and duties of Plaintiffs and Defendant for which Plaintiffs
22 seek a declaration of rights. Plaintiffs contend that Defendant's actions complained of
23 herein have unlawfully and unconstitutionally violated article II, section 2 of the
24 California Constitution and the California Administrative Procedure Act, while
25 Defendant maintains that these actions are lawful and constitutional. On January, 13,
26 2014, Defendant wrote to Plaintiffs' counsel confirming that she would refuse to
27
28

1 withdraw her December 5, 2011 memorandum. A true copy of this letter is attached to
2 this complaint as Exhibit F.

3
4 **FIRST CAUSE OF ACTION**
5 **(Violation of California Constitution, Article II, § 2)**
6 **(All Plaintiffs against Defendant Bowen)**

7 43. Plaintiffs incorporate by reference the allegations in the above paragraphs
8 as though fully set forth herein.

9 44. Defendant's actions violate article II, section 2 of the California Constitution,
10 and deny, and fail to protect, the constitutional right to vote of all otherwise-eligible
11 individuals in California who are on mandatory supervision and PRCS.

12 **SECOND CAUSE OF ACTION**
13 **(Violation of California Administrative Procedure Act, Govt. Code § 11340, *et seq.*)**
14 **(All Plaintiffs against Defendant Bowen)**

15 45. Plaintiffs incorporate by reference the allegations in the above paragraphs
16 as though fully set forth herein.

17 46. Defendant is responsible for issuing, utilizing, enforcing, or attempting to
18 enforce Secretary of State CC/ROV Memorandum No. 11134 as a guideline, criterion,
19 bulletin, manual, instruction, order, or standard of general application for the
20 administration of California.

21 47. Defendant is engaging in these actions without following the necessary steps
22 for promulgating a regulation as required by the California Administrative Procedure
23 Act, Gov. Code § 11340 *et seq.* She failed to initiate a formal rulemaking process, failed
24 to provide any opportunity for notice and comment, and never filed the Memorandum
25 No. 11134 or any related rulemaking action with the Office of Administrative Law.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Issue a declaration that:

a. Defendant's actions in issuing and implementing Secretary of State CC/ROV Memorandum No. 11134 violate article II, section 2 of the California Constitution in that these actions improperly disenfranchise individuals on mandatory supervision and PRCS, who are in fact eligible to vote; and

b. Defendant's actions in issuing and implementing CC/ROV Memorandum No. 11134 violate the California Administrative Procedure Act.


3. Grant injunctive relief directing that Defendant refrain from implementing the Secretary's Memorandum in any manner or taking any other action to disenfranchise individuals on mandatory supervision or PRCS, and ordering her instead to allow otherwise eligible Californians under these forms of supervision to vote.

4. Order Defendant to pay Plaintiffs' attorneys' fees and costs pursuant to Code Civ. Proc. § 1021.5 and other applicable statutes.

5. Grant Plaintiffs such further relief as the Court deems just and proper.

DATED: February 3, 2014

Respectfully submitted,

By: 
Michael T. Risher
Attorney for Plaintiffs

By: 
Joanna Elise Cuevas Ingram
Attorney for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Dorsey Nunn, am the Executive Director of Legal Services for Prisoners with Children and a co-founder of All of Us or None. I have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Michael Scott et al. v. Bowen*. I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true. In addition, the facts within paragraphs 14 and 16 are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2/3/14

Dorsey E. Nunn

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Melissa Breach, am the Executive Director of the League of Women Voters of California. I have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Michael Scott et al. v. Bowen*. I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true. In addition, the facts within paragraph 15 are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2/3/2014

Melissa Breach

1
2 VERIFICATION

3 I, Michael Scott, have read paragraph 11 of this Verified Petition for Writ of
4 Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Michael*
5 *Scott et al. v. Bowen*. The facts within this paragraph are within my own personal
6 knowledge and I know them to be true.
7

8 I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct.

10
11 DATED: 2/3/14

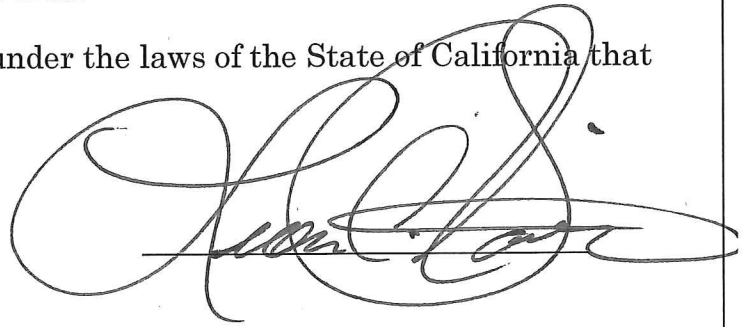
Michael Scott

VERIFICATION

I, Leon Cole Sweeting, have read paragraph 12 of this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Michael Scott et al. v. Bowen*. The facts within this paragraph are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2-3-14



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Martin Cerda, have read paragraph 13 of this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Michael Scott et al. v. Bowen*. The facts within this paragraph are within my own personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2-3-14

Martin Cerda

EXHIBIT A



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

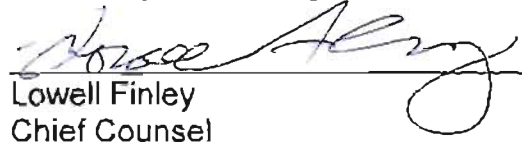
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

December 5, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11134

TO: All County Clerks/Registrars of Voters

FROM:


Lowell Finley
Chief Counsel

RE: Voter Registration: Status of Persons Convicted Under State's New
Criminal Justice Realignment Statutes

Voting Status under Realignment of Offenders Convicted of Low-Level Felonies

To determine its impact on voting eligibility, the Secretary of State's office has reviewed the criminal justice realignment legislation (AB 109 and AB 117) passed by the Legislature and signed into law by Governor Brown earlier this year. The conclusions of the analysis are summarized in the advice below. For the legal analysis supporting this advice, please see the attached memorandum.

Under AB 109 and AB 117 (collectively, the Criminal Justice Realignment Act, CJRA or Act) and effective October 1, 2011, there are four scenarios under which a person convicted of a felony can be incarcerated. Under three of the scenarios, the person is ineligible to vote while incarcerated. Under one of the scenarios, the person retains the right to vote while incarcerated. The four scenarios are:

1. **Felony sentence to state prison:** No change. The person has been convicted of a felony and sentenced to state prison. While in state prison, the person is *ineligible to vote*. A person returned to state prison for violating the terms of their parole is also *ineligible to vote*.
2. **Felony sentence to state prison, served in county jail under contract between the state and a county:** No change. The person has been convicted of a felony and sentenced to state prison. Under a contract between the state and a county, the person is serving the state prison sentence in a county jail. While in county jail, the person is *ineligible to vote*.
3. **Felony sentence to county jail: New.** The person has been convicted of a CJRA-defined low-level felony and sentenced, on or after October 1, 2011, to a term of more than one year in county jail. While in jail, the person is *ineligible to vote*. A person returned to jail for violating the terms of their post release

community supervision, or for violating probation that was granted for the concluding part of the sentence, is also *ineligible to vote*.

- 4. Jail commitment as a condition of probation in lieu of felony sentencing:** No change. The person has been convicted of a felony, but the judge has suspended imposition or execution of a felony sentence, instead placing the person on probation with the condition that the person serve one year or less in county jail. While in jail as a condition of this form of probation, the person *retains the right to vote* because the imposition or execution of the felony sentence was suspended.

Also effective October 1, 2011, there are three scenarios under which a person convicted of a felony and sentenced to state prison or county jail may be released, subject to supervision. Under all three scenarios, the person is ineligible to vote while remaining under supervision.

- 1. Parole:** No change. A person who was convicted of a felony, sentenced to state prison, and subsequently placed on state-supervised parole upon release from state prison is, until the period of parole ends, *ineligible to vote*.
- 2. Post Release Community Supervision: New.** A person who was convicted and sentenced to state prison prior to October 1, 2011, for what is now defined by the CJRA as a low-level felony, and is released from state prison to county-supervised post release community supervision is, until the period of supervision ends, *ineligible to vote*.
- 3. Court-approved service of the concluding portion of a felony county jail sentence on probation: New.** At the time a judge sentences a person to county jail for the conviction of a CJRA-defined low-level felony, the CJRA authorizes the judge to order that the person be released on probation for a specified, concluding portion of the term. This *post-sentencing* probation, which could last more than a year, continues until the end of the full sentence term. Until the period of this form of probation ends, the person is *ineligible to vote*.

Please feel free to contact me directly at (916) 653-7244 or Lowell.Finley@sos.ca.gov if you have any questions concerning this advice or the accompanying legal memorandum.

If you have any questions, please feel free to contact me at Lowell.Finley@sos.ca.gov or (916) 654-4666.

MEMORANDUM

The Voting Status of Offenders Convicted of Low-Level Felonies As Defined by the 2011 Realignment Legislation

INTRODUCTION

In 2011, Governor Brown proposed and the Legislature enacted a historic realignment from state government to local governments of the responsibility and funding for many governmental functions. An important component of that reform package was criminal justice realignment, also referred to as public safety realignment.

Assembly Bill 109, the Realignment Legislation of 2011 Addressing Public Safety, and Assembly Bill 117, the Criminal Justice Realignment Act of 2011 (referred to collectively as the Criminal Justice Realignment Act (CJRA or Act)), changes how felons convicted of defined "low-level" felonies are dealt with during imprisonment and mandatory post-imprisonment supervised release. The CJRA mandates that felons convicted of these "low-level" felonies, with no prior record of conviction for defined "serious" offenses, will serve their sentence in county jail. The CJRA authorizes the sentencing court, in its discretion, to suspend execution of a concluding portion of that sentence, with the remaining portion to be served under the supervision of county probation departments. Additionally, felons serving prison sentences for "low-level" felonies, regardless of prior convictions, are now subject to locally operated and supervised "post-release community supervision," in lieu of state-supervised parole. These changes raise questions about eligibility to vote for convicted felons on "post-release community supervision" rather than parole, as well as for convicted felons either serving a sentence for conviction of a "low-level" felony in county jail or under the supervision of the county probation department.

This memorandum addresses whether the changes made by the CJRA give offenders convicted and sentenced for CJRA-defined low-level felonies, who were formerly disqualified from voting, the right to vote because they are imprisoned in county jail rather than state prison. It also addresses whether offenders who were convicted of these CJRA-defined low-level felonies and confined in state prison, then released into a program of mandatory supervision that is not named "parole," remain disqualified from voting.

The Secretary of State's office concludes that the CJRA does not change the voting status of offenders convicted of CJRA-defined low-level felonies, either because they serve their felony sentences in county jail instead of state prison or because the mandatory supervision that is a condition of their release from prison is labeled

something other than “parole.” Offenders convicted of CJRA-defined low-level felonies continue to be disqualified from voting while serving a felony sentence in county jail, while at the discretion of the court serving a concluding portion of that term on county-supervised probation, or while they remain under mandatory “post release community supervision” after release from state prison.

REALIGNMENT LEGISLATION

The following summary provides an overview of the criminal justice realignment legislation passed by the Legislature and signed into law by Governor Brown earlier this year. It is taken from the *2011 Public Safety Realignment Fact Sheet* issued by the California Department of Corrections and Rehabilitation (CDCR) on July 15, 2011, which can be found at www.cdcr.ca.gov/realignment/index.html.

Earlier this year, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 109 and AB 117, historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California’s solution for reducing the number of inmates in the state’s 33 prisons to 137.5 percent design capacity by May 24, 2013, as ordered by the U.S. Supreme Court.

All provisions of AB 109 and AB 117 are prospective and implementation of the 2011 Realignment Legislation will begin October 1, 2011. ***No inmates currently in state prison will be transferred to county jails or released early.***

Governor Brown also signed multiple trailer bills to ensure the 2011 Realignment secured proper funding before implementation could go into effect.

...

Community, Local Custody

AB 109 allows non-violent, non-serious, and non-sex offenders to serve their sentence in county jails instead of state prisons. However, counties can contract back with the State to house local offenders.

Under AB 109:

- No inmates currently in state prison will be transferred to county jails.
- No inmates currently in state prison will be released early.
- All felons sent to state prison will continue to serve their entire sentence in state prison.

- All felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison.
- There are nearly 60 additional crimes that are not defined in Penal Code as serious or violent offenses but at the request of law enforcement were added as offenses that would be served in state prison rather than in local custody.

Please see the document "AB 109: Final Crime Exclusion List" for a complete listing of those crimes.

Post-Release (County-Level) Community Supervision

CDCR continues to have jurisdiction over all offenders who are on state parole **prior** to the implementation date of October 1, 2011. Prospectively, county-level supervision for offenders upon release from prison will include current non-violent, non-serious (irrespective of priors) and sex offenders. County-level supervision will **not** include:

- Third-strike offenders- those whose third strike was for a non-violent offense would still be on State parole.
- Offenders whose **current** commitment offense is serious or violent, as defined by California's Penal Code §§ 667.5(c) and 1192.7(c).
- High-risk sex offenders,
- Mentally Disordered Offenders
- Offenders on parole prior to October 1.

Offenders who meet the above-stated conditions will continue to be under state parole supervision.

The county Board of Supervisors will designate a county agency to be responsible for post-release supervision and will provide that information to CDCR by August 1, 2011. CDCR must notify counties of an individual's release at least one month prior. Once the individual has been released CDCR no longer has jurisdiction over any person who is under post-release community supervision. No person shall be returned to prison on a parole revocation except for those persons previously sentenced to a term of life.

Parole Revocations

Starting October 1, 2011, all parole revocations will be served in county jail instead of state prison and can only be up to 180 days.

The responsibility of parole revocations will continue under the Board of Parole Hearings until July 1, 2013, at which time the parole revocation process will become a local court-based process. Local courts, rather than the Board of Parole Hearings, will be the designated authority for

determining revocations. Contracting back to the state for offenders to complete a custody parole revocation is not an option. Only offenders previously sentenced to a term of life can be revoked to prison.

CONVICTED FELON VOTING STATUS UNDER THE CJRA

Article II, section 4 of the California Constitution disqualifies from voting those “imprisoned or on parole for the conviction of a felony.”¹

Prior to the Legislature’s enactment of the CJRA, court decisions, guidance issued by the Secretary of State and some Elections Code provisions treated being “imprisoned for the conviction of a felony” as synonymous with being “in prison” because every person convicted of and sentenced to serve a felony sentence was required to serve that sentence in state prison.

However, following the changes mandated by the CJRA, “imprisoned for the conviction of a felony” and “in prison for the conviction of a felony” can no longer be considered synonymous because the CJRA requires every person convicted of and sentenced for what CJRA defines to be less serious felonies to serve that sentence in a county *jail*, not in state *prison*.

Specifically, under the CJRA, persons convicted of certain felonies (designated by the CJRA as “low-level” felonies) and sentenced after the Act’s effective date of October 1, 2011, must serve their felony sentences in county jail rather than state prison. Consistent with this change, the CJRA also changes the Penal Code’s definition of “felony” to include offenses carrying sentences of imprisonment in county jail for terms longer than one year.²

¹ The full text of article II, section 4 reads: “The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.”

² The Act amended the definition of “felony” by amending subdivision (a) of section 17 of the Penal Code (added language in italics):

(a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or *notwithstanding any other provision of law, by imprisonment in a county jail under the* (footnote cont’d next page)

provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

As amended by the Act, subdivision (h) of Penal Code section 11170 states:

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.

The CJRA also provides that inmates already serving sentences for conviction of these CJRA-defined low-level felonies in state prison before October 1, 2011, are, upon their release, no longer to be placed on state-administered parole, but instead in a new, parallel system of county-administered, non-custodial supervision named "post-release community supervision."

Finally, the CJRA gives a judge who sentences a person to county jail for the conviction of a CJRA-defined low-level felony the option to order the person to serve a specified, final portion of the term on probation.

Convicted Felons – Voter Eligibility

As of October 1, 2011, there are four scenarios under which a person convicted of a felony can be incarcerated. Under three of the scenarios, the person is ineligible to vote while incarcerated. Under one of the scenarios, the person retains the right to vote while incarcerated. The four scenarios are:

1. **Felony sentence to state prison:** No change. The person has been convicted of a felony and sentenced to state prison. While in state prison, the person is *ineligible to vote*. A person returned to state prison for violating the terms of their parole is also *ineligible to vote*.
2. **Felony sentence to state prison, served in county jail under contract between the state and a county:** No change. The person has been convicted of a felony and sentenced to state prison. Under a contract between the state and a county, the person is serving the state prison sentence in a county jail. While in county jail, the person is *ineligible to vote*.
3. **Felony sentence to county jail: *New*.** The person has been convicted of a CJRA-defined low-level felony and sentenced, on or after October 1, 2011, to a term of more than one year in county jail. While in county jail, the person is *ineligible to vote*. A person returned to county jail for violating the terms of post-release community supervision, or for violating probation that was granted for the concluding part of the sentence, is also *ineligible to vote*.
4. **Jail commitment as a condition of probation in lieu of felony sentencing:** No change. The person has been convicted of a felony, but the judge has suspended the imposition or execution of a felony sentence, instead placing the person on probation with the condition that the person serve one year or less in county jail. While in county jail as a condition of this form of probation, the

person *retains the right to vote* because the imposition or execution of the felony sentence was suspended.

There are now three scenarios under which a person convicted of a felony and sentenced to state prison or county jail may be released, subject to parole, post-release community supervision, or probation. Under all three scenarios, the person is ineligible to vote while remaining under these types of supervision.

1. **Parole:** No change. A person who was convicted of a felony, sentenced to state prison, and subsequently placed on state-supervised parole upon release from state prison is, until the period of parole ends, *ineligible to vote*.
2. **Post-Release Community Supervision: *New*.** A person who was convicted and sentenced to state prison prior to October 1, 2011, for what is now defined by the CJRA as a low-level felony, and is released from state prison to county-administered post-release community supervision is, until the period of supervision ends, *ineligible to vote*.
3. **Court-approved service of the concluding portion of a felony county jail sentence on probation: *New*.** At the time a judge sentences a person to county jail for the conviction of a CJRA-defined low-level felony, the judge has the option to order that the person be released on probation for a specified, concluding portion of the term. This *post-sentencing* probation, which could last more than a year, continues until the end of the full sentence term. Until the period of this form of probation ends, the person is *ineligible to vote*.

Background

Since statehood, the California Constitution has prohibited voting by felons. Until 1974, a person sentenced to prison following conviction of a felony (“infamous crime” in earlier versions of the Constitution) was banned from voting for life. In 1974, the voters amended article II, section 3 of the Constitution to restore the right to vote to convicted felons after they served their sentences and completed parole. Subsequently renumbered, the language of that amendment remains unchanged in today’s Constitution:

The Legislature . . . shall provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony. (Cal. Const., art. II, § 4.)³

On December 28, 2006, the Secretary of State's office issued CC/ROV #06403, Subject: Prisoner Voting Rights. The key passage states: "the only persons disqualified from voting by reason of Article II, Section 4, are those who are imprisoned in state prison for, or on parole as the result of, a felony conviction." CC/ROV #06403 was issued following the decision of the California Court of Appeal in *League of Women Voters v. McPherson* (2006) 145 Cal.App.4th 1469.

In *McPherson*, the court held that in cases where a person was convicted of a felony but the trial judge suspended the imposition or execution of sentence and instead ordered the person to serve less than one year in county jail as a condition of probation, the person was not imprisoned for the conviction of a felony and was therefore eligible to vote. (*League of Women Voters v. McPherson, supra*, 145 Cal.App.4th at 1475; see *Stephens v. Toomey* (1959) 51 Cal.2d 864, 870-871.) The court's holding and rationale remain good law. Conviction for a felony, standing alone, does not make a person ineligible to vote. For disenfranchisement to result, conviction must be followed by the court's imposition of a felony sentence of imprisonment. The court formulated its order, however, as a short, simple rule of thumb that did not incorporate the court's rationale. It ordered issuance of a peremptory writ of mandate, directing the Secretary of State "to issue a memorandum informing the county clerks and elections officials that the only persons disqualified from voting by reason of article II, section 4 are those who have been imprisoned in state prison or who are on parole as a result of the conviction of a felony." (*Id.*, at 1486.) CC/ROV #06403 tracked the language of the court's order. The court's order and the CC/ROV accurately reflected the law at the time they were issued. As explained below, they no longer do.⁴

³ As noted above, the full text of article II, section 4 reads: "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."

⁴ Since CC/ROV #06403 was issued, the Secretary of State has issued two additional documents on the subject of felon disenfranchisement. A brochure entitled "Vote in 2010!" states that, among the qualifications to vote, a person must not be "in prison or on parole for the conviction of a felony." A second brochure entitled "A Voting Guide for Currently or Formerly Incarcerated Californians" states that, to vote, a person must "[n]ot be in prison or on parole as a result of a felony conviction" or "serving a state (footnote cont'd next page)

The Governor's Budget for 2011-2012, under the heading "Local Jurisdiction for Lower-Level Offenders and Parole Violators," proposed to re-direct certain defined low-level felony offenders, convicted and sentenced to terms of imprisonment, from state prison to county jails. The Governor's Budget proposed that "offenders without any current or prior serious or violent or sex convictions would become the responsibility of local jurisdictions," serving their felony sentences in county jail rather than state prison. (*Id.*, p. 23.)

As outlined above, there is an important difference between these county jail inmates, who have been convicted and sentenced for a felony, and the county jail inmates in the *McPherson* case, who were convicted of a felony but not sentenced for that felony and instead were placed in county jail as a condition of probation.

Under the heading "Realign Adult Parole to the Counties," the Governor's Budget proposed a similar change for parolees:

This proposal would shift the responsibility for adult parole to the counties. Since these offenders typically live in the community from which they left, county law enforcement and probation are usually more knowledgeable about the offender, suggesting local supervision of parolees is a better policy and public safety option. (P. 23, italics added.)

"Imprisoned" is not synonymous with "in prison."

Webster's Third New International Dictionary (1981) defines "imprison" as "to put in prison: confine in a jail."

As this definition shows, "imprisoned" is a broader term than "in prison" because it is not specific as to the place of confinement – it can mean "imprisoned" in a state prison for a felony conviction or "imprisoned" in a county jail for a felony conviction. By contrast, "in prison" is narrower because it is specific to the place of confinement, in this case meaning "state prison," not "county jail."

prison term in a county jail under contract between state and local officials." For purposes of the present analysis, it is important to note that inmates housed in a county jail pursuant to such contracts with the CDCR have been sentenced to state prison and remain under CDCR jurisdiction.

The Elections Code contains a number of provisions regarding the voting status of felons that incorporate the Constitution's phrase "imprisoned or on parole for the conviction of a felony" verbatim or with minor variations. Section 2150(a)(9)⁵ requires the affidavit of registration to show "[t]hat the affiant is currently not imprisoned or on parole for the conviction of a felony." Section 2201 requires a county elections official to cancel a voter's registration "[u]pon proof that the person is presently imprisoned or on parole for conviction of a felony." Section 2212 requires that, based on court records, "[t]he elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of those persons who are currently imprisoned or on parole for the conviction of a felony." Sentencing a person convicted of a CJRA defined low-level felony to county jail is consistent with the dictionary definition of imprison.

Several other sections of the Elections Code, however, substitute the words "in prison" for the Constitution's term "imprisoned." Section 2101 states that "[a] person entitled to register to vote shall be a United States citizen, a resident of California, not *in prison* or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." (Emphasis added.) Section 2016 requires printed literature or media announcements made in connection with programs to encourage voter registration to contain the following statement: "A person entitled to register to vote must be a United States citizen, a resident of California, not *in prison* or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." (Emphasis added.) Section 2300 establishes a publicly-available Voter Bill of Rights that defines a "valid registered voter" as "a United States citizen who is a resident in this state, who is at least 18 years of age and not *in prison* or on parole for conviction of a felony, and who is registered to vote at his or her current residence address." (Emphasis added.) Construed literally, these provisions would not apply to a person serving a sentence in county jail for the conviction of a felony.

When the Elections Code sections using the "in prison" terminology were adopted, there was no practical difference under California law between being "imprisoned" for a felony conviction and being "in prison" for a felony conviction. That is because everyone imprisoned for the conviction of any felony was required to serve that sentence in state prison.

⁵ All statutory references are to the Elections Code unless otherwise noted.

Beginning October 1, 2011, however, the Criminal Justice Realignment Act requires that “low-level felony offenders” – persons CJRA defines as being convicted of specified non-serious, non-sexual, non-violent felonies – who are sentenced to a term of incarceration serve their felony sentences in county jail. Under the Act, these individuals are “*imprisoned* for the conviction of a felony,” but they are not “*in prison* for the conviction of a felony.”

Parole and Post-Release Community Supervision are functionally equivalent.

Webster’s Third New International Dictionary (1981) defines parole as “a conditional and revocable release of a prisoner serving an indeterminate or unexpired sentence in a penal or correctional institution.”

Under this definition, Post-Release Community Supervision (PRCS) – a program enacted as a part of the CJRA – is functionally equivalent to parole in the California criminal justice system.

All of the Elections Code voter disqualification provisions discussed above with respect to felony imprisonment also state that a voter is disqualified while “on parole.” In addition to those provisions, section 14240(a)(5) permits a poll worker to challenge a person’s eligibility to vote on several grounds, including that the person seeking to vote in the polling place is “currently on parole for the conviction of a felony.” Before the CJRA, this Elections Code language aligned directly with the terminology and structure of the correctional and rehabilitative system established in the Penal Code. Every felon released from state prison on condition of supervision was “on parole” in a system with “parole officers,” administered by the California Department of Corrections and Rehabilitation. All decisions on whether to grant, deny or revoke parole were made by the Board of Parole Hearings.

The pre-CJRA parole system remains unchanged for state prison inmates serving sentences for conviction of more serious felonies. For state prison inmates serving sentences for CJRA-defined low-level felonies, however, the Act creates a parallel program of supervised release. Beginning October 1, 2011, these inmates are no longer released into state-supervised “parole.” Instead, they are released into the new, county-administered PRCS program. Like traditional parole, PRCS is mandatory and subject to a detailed supervision agreement. It is the functional equivalent of parole. Absent clear indicia of intent otherwise, PRCS should be viewed, from the standpoint of the electoral

franchise, as indistinguishable from parole: released felons in either status remain ineligible to vote.

Just as determining the voting status of an inmate convicted and sentenced for a felony is not simply a matter of determining whether the inmate is literally "in prison," determining the voting status of a former felony inmate is not simply a matter of determining whether the former inmate is literally "on parole." For example, a person released from federal prison after being convicted and sentenced for a federal felony is released into "supervised release." It is well established that former federal inmates are ineligible to vote in California while they are in the federal supervised release program, even though the program does not use the term "parole."

Several provisions of the CJRA make it clear that PRCS is the functional equivalent of parole. Penal Code section 3000(a)(1) provides in part: "A sentence resulting in imprisonment in the state prison pursuant to Section 1168 or 1170 shall include a period of parole supervision or postrelease community supervision, unless waived, or as otherwise provided in this article."

Penal Code section 3003(e) provides in part: "The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions . . ." Penal Code section 3450(a)(5) provides: "Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society." Penal Code section 3451(c)(2) provides in part: "The department shall also inform persons serving a term of parole for a felony offense who are subject to this section of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that parolee. Thirty days prior to the release of any person subject to postrelease supervision by a county, the department shall notify the county of all information that would otherwise be required for parolees under subdivision (e) of Section 3003." Penal Code section 3452 provides in part: "(a) Persons eligible for postrelease community supervision pursuant to this title shall enter into a postrelease community supervision agreement prior to, and as a condition of, their release from prison. Persons on parole transferred to postrelease community supervision shall enter into a postrelease community supervision agreement as a condition of their release from state prison. (b)

A postrelease community supervision agreement shall specify the following . . .” These are just some examples indicating that PRCS is the functional equivalent of parole.⁶

Express legislative intent is required to overturn long-established principles of law.

California courts have long recognized that “[i]t should not ‘be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.’” (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92, quoting *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 644 [122 P.2d 526]; accord *Fuentes v. Workers’ Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 6-7.) As recently as 2008, the Court of Appeal expressed this principle in terms directly applicable to the construction of the CJRA:

If the Legislature intended to effect a substantial change in the law by removing an entire class . . . from [a law’s] coverage, it can and surely would do so expressly. An intention to legislate by implication will not be presumed. (*Canister v. Emergency Ambulance Service* (2008) 160 Cal.App.4th 388, 400-401.)⁷

⁶ The CJRA also provides for a new option of post-sentencing probation. At the time a judge sentences a person to county jail for the conviction of a CJRA defined low-level felony, the judge has the option to suspend execution of a concluding portion of the term selected and instead order the person to serve the concluding portion of the term on probation. (Pen. Code § 1170(h)(5)(B).) This concluding period of probation, which could last more than a year, continues until the end of the full sentence term. This form of probation is more akin to traditional parole than to the post-conviction, pre-sentencing probation, conditioned on serving a year or less in county jail, that judges had before the CJRA went into effect and continue to have. A person released on probation pursuant to this new felony sentencing option is, like a parolee, continuing to serve their felony sentence although no longer in custody. Until the period of this form of probation ends, the person is ineligible to vote.

⁷ Accord, *Krater v. City of Los Angeles* (1982) 130 Cal.App.3d 839, 845; *Fuentes v. Workers’ Comp. Appeals Bd.*, *supra*, 16 Cal.3d at p. 7; *Ramos v. City of Santa Clara* (1973) 35 Cal.App.3d 93, 97 [“subsequent legislation is not presumed to effectuate a repeal of the existing law in the absence of that expressed intent”].

In the case of the CJRA, the Legislature gave no indication that it intended realignment to remove an entire class of convicted felons – CJRA-defined low-level felony offenders – from the coverage of laws that disqualify convicted felons from voting while serving their sentences or on conditional, revocable supervised release. Indeed, there is no indication that the Legislature ever considered the issue. In the entire body of realignment and related budget trailer bills enacted by the Legislature, there is not a single reference to the felon ineligibility provision of article II, section 4 of the California Constitution. Other than conforming amendments to add references to the newly amended Penal Code section 1170(h) to a number of Elections Code sections that already defined certain offenses as felonies, there is not a single word about elections, electors, the electoral franchise, voting, voter registration, voters, qualification or disqualification of voters, voting privileges, or rights. The Legislative Counsel's digests and legislative committee reports for those bills are equally silent with regard to article II, section 4 and do not even mention the conforming amendments to the Elections Code. Thus, the legislation itself, as well as the official material available to the legislators who voted to adopt it, contained no indication, express or otherwise, of any intent to change anyone's eligibility to vote from what it had been under prior law. It is difficult to imagine that the Legislature would act to enfranchise thousands of previously ineligible convicted felons without indicating any intention to do so.

On the contrary, language in many of the realignment provisions indicates that the Legislature considered a felony sentence to serve a term in county jail to be the equivalent of a felony sentence to serve a term in state prison. Previously, "felony" was defined as an offense carrying a punishment of incarceration in state prison. (Former Pen. Code § 17(a).) The Act amended that definition to include offenses carrying a punishment of one of several available sentences of more than one year in county jail. (Pen. Code § 17(a), as amended, cross-referencing Pen. Code § 1170(h) [where there is no term specified in the underlying offense, a sentence to county jail for 16 months or 2 or 3 years].)

In addition, the Assembly Budget Committee Analysis, concurring in Senate amendments to AB 109, Chapter 15, Statutes of 2011, the first of the two realignment bills, shows that the definitional change was part and parcel of the overall realignment project:

Make various changes to Low Level Offender statutes as follows:

- a) Redefine a felony to include imprisonment in a county jail for more than a year;
- b) Change all enumerated penalty code sections to include the phrase "pursuant to subdivision (h) of Penal Code

Section (PC) 1170;"

- c) Amend PC Section 1170 to include (h), which provides 16 months, two, or three years if the punishment is specified to be served in county jail unless the person has a prior violent, serious, or sex offense (in which case they serve time in state prison); and,
- d) Provide that counties can contract with the state to house felony offenders.

Similarly, language in the Act describes inmates released from state prison into the new post release community supervision program as "parolees." For example, Penal Code section 3450(a)(5) provides: "Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society." This usage is consistent with the original description of the realignment proposal in the Governor's Budget for 2011-2012, discussed above, proposing to "Realign Adult Parole to the Counties."

A statutory interpretation that avoids possible unconstitutionality is favored.

The California Constitution requires the Legislature to "provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony." (Cal. Const., art. II, § 4.)

California courts presume, as a principle of statutory construction, that the Legislature intends to enact constitutionally valid statutes. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 229; *In re Kay* (1970) 1 Cal.3d 930, 942.) This presumption requires adoption of "an interpretation that, consistent with the statutory language and purpose, eliminates doubts as to the provision's constitutionality." (*Id.*) The presumption has been applied in a case raising statutory construction issues very similar to those posed by the CJRA. The appellant in that case argued that parole provisions amended as part of the Uniform Determinate Sentencing Law were intended to enfranchise parolees. The Court of Appeal rejected the argument, stating that construing the statutes to enfranchise parolees would be constitutionally impermissible under article II, section 4 of the Constitution. (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 153 fn.19.)

The enactment of the CJRA requires that the term "in prison" in the Elections Code provisions described above be construed to mean "imprisoned." That construction is consistent with the language of article II, section 4 of the Constitution, with the other Elections Code sections that use the term "imprisoned," and with the intent of the CJRA. An alternative, literal construction of those code sections to apply them only to a person who is in prison would allow persons convicted of felonies to vote, simply because they were sentenced to imprisonment in county jail rather than state prison. That literal construction would raise equally serious doubts about the constitutionality of the CJRA, as would any construction that would allow voting by felons released from state prison into PRCS rather than parole.

Courts will not blindly accept terminology or characterizations employed in legislation when they obfuscate the true effect of the legislation. (Cf., *Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392 [court must determine the character of a tax from its incidents, not the designation given to it by the Legislature].) An attempt, for example, to amend the Penal Code solely by renaming state prisons as "State Detention Centers" and state parole as "State Supervised Release," while stating an intent that felons imprisoned in State Detention Centers or on State Supervised Release should be entitled to register and vote because they are not "in prison or on parole for the conviction of a felony" under Elections Code section 2101 would be very unlikely to pass constitutional muster.

The differences between the changes in this hypothetical example and the changes the Legislature made in the CJRA are differences of degree, not kind. For the felonies covered by the CJRA, the offenses and terms of imprisonment are unchanged. Only the place of imprisonment is changed, from a state prison to a county jail, for those receiving felony sentences on or after October 1, 2011. Correspondingly, the fact that post-release supervision is mandatory and subject to a detailed supervision agreement remains unchanged. Only the governmental entity responsible for supervision after release from prison changes, from the state to a county, for those released from prison who were serving sentences imposed before October 1, 2011, for the same offenses. Of course, unlike the hypothetical example, the Legislature expressed no intent for the changes made by the CJRA to affect anyone's eligibility to vote. Serious constitutional doubts would be raised if the Secretary of State or local elections officials construed the CJRA, together with the pre-existing Elections Code provisions, as granting the right to vote to persons convicted of the same felonies and sentenced to terms of the same length, simply because they are imprisoned in county jail instead of state prison. Similarly, serious constitutional doubts would be raised if the Act, together with the pre-existing Elections Code provisions, were construed to grant the right to vote to felons released from prison, simply because the program into which they were released had

been renamed from parole to “Post-Release Community Supervision” and placed under county rather than state control.

The Criminal Justice Realignment Act does not disenfranchise anyone who would have been eligible to vote under prior law.

In *McPherson*, the Court of Appeal declined to construe election law to disenfranchise otherwise eligible voters without clear evidence that the Legislature intended the statutes it enacted to have that effect.

[I]n the absence of any clear intent by the Legislature or the voters, we apply the principle that " '[t]he exercise of the franchise is one of the most important functions of good citizenship and no construction of an election law should be indulged that would disenfranchise any voter if the law is susceptible of any other meaning.' " (*McPherson*, 145 Cal.App.4th at 1482, citation omitted.)

McPherson does not conflict with the canon of statutory construction, discussed above, that long-established principles of law should not be overturned unless the Legislature has clearly shown it intends to do so “either by express declaration or by necessary implication.” (*Theodor v. Superior Court*, *supra*, 8 Cal.3d at 92, quoting *County of Los Angeles v. Frisbie*, *supra*, 19 Cal.2d at 644; accord *Fuentes v. Workers' Comp. Appeals Bd.*, *supra*, 16 Cal.3d at 6-7.) The construction of the CJRA adopted here does not disenfranchise anyone who would have been eligible to vote under prior law. As before, a person convicted of a CJRA-defined low-level felony and sentenced to a term of imprisonment that exceeds the maximum misdemeanor punishment of one year in county jail is ineligible to vote while serving that term. The only significant difference is the facility in which the person is imprisoned. Similarly, a person released from state prison who remains ineligible to vote during a term of PRCS administered by a county would, under prior law, also have been ineligible to vote during a term of parole supervised by the state. On the other hand, a construction of the Act that ignored these parallels would enfranchise thousands of convicted felons that were disenfranchised under prior law with no indication from the Legislature that it intended this result when it adopted the Act.

CONCLUSION

For all the reasons stated above, the Secretary of State's office concludes that the CJRA did not change the voting status of offenders convicted of CJRA-defined low-level felonies, either because they serve their felony sentences in jail instead of prison or

because the mandatory supervision that is a condition of their release from prison is labeled something other than "parole."

Under the CJRA's new provisions, any person convicted of a CJRA-defined low-level felony is disqualified from voting while serving a sentence to county jail, while on probation authorized by the sentencing judge in lieu of serving the concluding part of such a felony county jail sentence, or while under "post-release community supervision" after release from prison.

As in the past, a person remains eligible to vote despite having been convicted of a felony, if they are in county jail as a condition of probation ordered by a judge who elects to suspend the imposition or execution of sentence, and a person convicted of a felony remains ineligible to vote while serving a felony sentence in state prison or while on parole.

EXHIBIT B



MY VOICE. MY CHOICE.



Voting Rights for Californians with Criminal Convictions or Detained in Jail or Prison

Eligibility Requirements

You can register to vote if you are:

- A citizen of the United States of America;
- A resident of California;
- At least 18 years of age or older on or before election day;
- Not in prison, on parole, serving a state prison sentence in county jail, serving a sentence for a felony pursuant to subdivision (h) of Penal Code section 1170, or on post release community supervision; and
- Not found mentally incompetent by a court of law.

Criminal Justice Realignment Act

In 2011, the Legislature passed and the Governor signed the Criminal Justice Realignment Act (CJRA). Under [Penal Code section 1170\(h\)](#), low-level felons are sentenced to county jail and/or supervision by the county probation department instead of state prison. CJRA has caused some confusion about voting rights among people who have criminal convictions. Below is a chart of who is eligible and who is not eligible to register to vote in California.

Not Eligible

- ✓ In state prison.
- ✓ In county jail serving a state prison sentence.
- ✓ In county jail serving a felony sentence under Penal Code section 1170(h).
- ✓ On parole, mandatory supervision, or post release community supervision.

Eligible

- ✓ In county jail serving a misdemeanor sentence. A misdemeanor *never* affects your right to vote.
- ✓ In county jail because jail time is a condition of probation.
- ✓ On probation.
- ✓ Done with parole, mandatory supervision, or post release community supervision. Your right to vote is *automatically* restored when parole or supervision is done.

California Penal Code section 2910 allows the California Department of Corrections & Rehabilitation (CDCR) to make agreements with local governments to house felons in a county jail or other correctional facility. For more information, please visit CDCR's website www.cdcr.ca.gov/parole/local_assistance_program/index.html. If you have questions about your voting rights, please contact your parole or county probation office.

How to Register to Vote

You may request a voter registration form from the Secretary of State or your county elections office. You may also apply to register to vote on the Secretary of State's website RegisterToVote.ca.gov. Your

voter registration application must be received or postmarked at least fifteen (15) days before election day to be eligible to vote in that election. Voter registration forms and voting materials are available in English, Chinese, Hindi, Japanese, Khmer, Korean, Spanish, Tagalog, Thai, and Vietnamese. If you are in jail, you are entitled to receive a voter registration form if you are eligible to vote. See the attached list for state and local elections office contact information.

Vote by Mail

If you are already registered to vote at your current home address, you may request a vote-by-mail ballot application by contacting your county elections office. Once you receive your vote-by-mail ballot application, you must complete and return it to your county elections office at least seven (7) days before election day.

If you are not registered to vote at your current home address, you may register or re-register to vote and request a vote-by-mail ballot on the Secretary of State's website RegisterToVote.ca.gov.

Release from Custody

If you requested a vote-by-mail ballot but are released from custody before you receive your ballot, you can still vote. Just go to the polling place for your home address or any polling place in the county where you are registered and vote a provisional ballot.

If you change your name, home address, mailing address, or party preference you must complete a new voter registration form.

Registration forms are available at most public libraries, government offices, and online at RegisterToVote.ca.gov.

Resources

For more information contact your county elections office (see attached roster) or the California Secretary of State:

**California Secretary of State
Elections Division**
1500 11th Street, 5th Floor
Sacramento, CA 95814
elections@sos.ca.gov
www.sos.ca.gov

Voter Hotlines

(800) 345-VOTE (8683) – English
(800) 232-VOTA (8682) - español / Spanish
(800) 339-2857 - 中文 / Chinese
(888) 345-2692 - हिन्दी / Hindi
(800) 339-2865 - 日本語 / Japanese
(888) 345-4917 - ខ្មែរ / Khmer
(866) 575-1558 - 한국어 / Korean
(800) 339-2957 - Tagalog
(855) 345-3933 - ภาษาไทย / Thai
(800) 339-8163 - Việt ngữ / Vietnamese
(800) 833-8683 – TTY/TDD

California County Elections Officials

Alameda

1225 Fallon Street
Room G-1
Oakland, CA 94612
(510) 272-6933

Alpine

P.O. Box 158
Markleeville, CA 96120
(530) 694-2281

Amador

810 Court Street
Jackson, CA 95642
(209) 223-6465

Butte

25 County Center Drive
Suite 110
Oroville, CA 95965-3361
(530) 538-7761

Calaveras

891 Mountain Ranch Road
San Andreas, CA 95249
(209) 754-6376

Colusa

546 Jay Street, Suite 200
Colusa, CA 95932
(530) 458-0500

Contra Costa

P.O. Box 271
Martinez, CA 94553
(925) 335-7800

Del Norte County

981 H Street, Room 160
Crescent City, CA 95531
(707) 465-0383

El Dorado

P.O. Box 678001
Placerville, CA 95667
(530) 621-7480

Fresno

2221 Kern Street
Fresno, CA 93721
(559) 600-8683

Glenn

516 W. Sycamore Street
Willows, CA 95988
(530) 934-6414

Humboldt

3033 H Street, Room 20
Eureka, CA 95501
(707) 445-7481

Imperial

940 W Main Street,
Suite 206
El Centro, CA 92243
(760) 482-4226

Inyo

P.O. Drawer F
Independence, CA 93526
(760) 878-0224

Kern

1115 Truxtun Avenue
Bakersfield, CA 93301
(661) 868-3590

Kings

1400 W. Lacey Blvd.
Hanford, CA 93230
(559) 582-3211x-4401

Lake

255 N. Forbes Street
Lakeport, CA 95453
(707) 263-2372

Lassen

220 S. Lassen Street,
Suite 5
Susanville, CA 96130
(530) 251-8217

Los Angeles

P.O. Box 1024
Norwalk, CA 90651-1024
(562) 466-1310

Madera

200 West 4th Street
Madera, CA 93637
(559) 675-7720

Marin

P.O. Box E
San Rafael, CA 94913-3904
(415) 499-6456

Mariposa

P.O. Box 247
Mariposa, CA 95338
(209) 966-2007

Mendocino

501 Low Gap Road,
Room 1020
Ukiah, CA 95482
(707) 463-4371

Merced

2222 M Street, Room 14
Merced, CA 95340
(209) 385-7541

Modoc

204 S. Court Street
Alturas, CA 96101
(530) 233-6205

Mono

P.O. Box 237
Bridgeport, CA 93517
(760) 932-5537

Monterey

P.O. Box 4400
Salinas, CA 93912
(831) 796-1499

Napa

900 Coombs Street,
Suite 256
Napa, CA 94559
(707) 253-4321

Nevada

950 Maidu Avenue
Nevada City, CA 95959
(530) 265-1298

Orange

P.O. Box 11298
Santa Ana, CA 92711
(714) 567-7600

Placer

P.O. Box 5278
Auburn, CA 95604
(530) 886-5650

Plumas

520 Main Street,
Room 102
Quincy, CA 95971
(530) 283-6256

Riverside

2724 Gateway Drive
Riverside, CA 92507-0918
(951) 486-7200

Sacramento

7000 65th Street
Sacramento, CA 95823-2315
(916) 875-6451

San Benito

440 Fifth Street, Room 206
Hollister, CA 95023-3843
(831) 636-4029

San Bernardino

777 E. Rialto Avenue
San Bernardino, CA 92415
(909) 387-8300

San Diego

5201 Ruffin Road, Suite I
San Diego, CA 92123
(858) 565-5800

San Francisco

1 Dr. Carlton B. Goodlett
Place, Room 48
San Francisco, CA 94102
(415) 554-4375

San Joaquin

P.O. Box 810
Stockton, CA 95201
(209) 468-2885

San Luis Obispo

1055 Monterey Street,
Room D-120
San Luis Obispo, CA 93408
(805) 781-5228

San Mateo

40 Tower Road
San Mateo, CA 94402
(650) 312-5222

Santa Barbara

P.O. Box 61510
Santa Barbara, CA 93160
(805) 568-2200

Santa Clara

P.O. Box 611360
San Jose, CA 95161-1360
(408) 299-8683

Santa Cruz

701 Ocean Street,
Room 210
Santa Cruz, CA 95060-4076
(831) 454-2060

Shasta

P.O. Box 990880
Redding, CA 96099-0880
(530) 225-5730

Sierra

P.O. Drawer D
Downieville, CA 95936-0398
(530) 289-3295

Siskiyou

510 N. Main Street
Yreka, CA 96097-9910
(530) 842-8084

Solano

675 Texas Street,
Suite 2600
Fairfield, CA 94533
(707) 784-6675

Sonoma

P.O. Box 11485
Santa Rosa, CA 95406-1485
(707) 565-6800

Stanislaus

1021 I Street, Suite 101
Modesto, CA 95354-2331
(209) 525-5200

Sutter

1435 Veterans Memorial Circle
Yuba City, CA 95993
(530) 822-7122

Tehama

P.O. Box 250
Red Bluff, CA 96080-0250
(530) 527-8190

Trinity

P.O. Box 1215
Weaverville, CA 96093-1258
(530) 623-1220

Tulare

5951 S. Mooney Blvd.
Visalia, CA 93277
(559) 624-7300

Tuolumne

2 South Green Street
Sonora, CA 95370-4696
(209) 533-5570

Ventura

800 S. Victoria Avenue,
L-1200
Ventura, CA 93009-1200
(805) 654-2781

Yolo

P.O. Box 1820
Woodland, CA 95776-1820
(530) 666-8133

Yuba

915 8th Street, Suite 107
Marysville, CA 95901-5273
(530) 749-7855

EXHIBIT C

CALIFORNIA VOTER REGISTRATION FORM SOS

Fill out this form if you are a new voter, have moved or changed your name, or want to change your political party preference.
You must be a U.S. citizen and at least 18 years old by the next election to use this form. Use blue or black ink. Print clearly.

Your legal name: First name

Middle name

①

Last name

Optional

② ③ Mr. Mrs. Ms. Miss

Home address – not a P.O. Box or business address – (Number, Street, Ave., Drive, etc. Include N, S, E, W)

Apt or unit #

④

City

State

Zip

California county

⑤ CA

If you do not have a street address, describe where you live (Cross streets, Route, N, S, E, W)

⑥

Mailing address – if different from above, or P.O. Box

⑦

City

State

Zip

Foreign country

⑧

Date of birth

U.S. state or foreign country of birth

⑨ MM DD 19 YY ⑩

CA driver license or CA ID card #

If you do not have a CA driver license or ID card, list the last 4 numbers of your Social Security Number, if you have one.

SSN (Last 4 numbers)

Phone numbers are posted at polling places on election day.

⑪

Email (optional)

Phone number (optional)

⑫ ⑬

⑭ Do you want to disclose a political party preference?

Yes, my political party preference is (check one):

- American Independent Party Americans Elect Party Democratic Party
 Green Party Libertarian Party Peace and Freedom Party
 Republican Party Other (specify): _____

No, I do not want to disclose a political party preference.

(If you check this box, you may not be able to vote for some parties' candidates at a primary election for U.S. President or party committee.)

⑮ To receive a vote-by-mail ballot in all elections, initial here: _____

⑯ If you were registered to vote before, fill out below:

First name

Middle initial

Last name

Previous address where you were registered

City

State

Zip

Previous county

Previous political party preference (if any)

⑰ Are you a U.S. citizen? Yes No

Will you be 18 or older by the next election? Yes No

A "No" answer to either question means you CANNOT register to vote.

⑱ Read and sign below.

I am a U.S. citizen and will be at least 18 years old on election day. I am not in prison, on parole, serving a state prison sentence in county jail, serving a sentence for a felony pursuant to subdivision (h) of Penal Code section 1170, or on post release community supervision. I understand that it is a crime to intentionally provide incorrect information on this form. I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Voter Signature

Date Signed: Month Day Year

59 BZ 901140

170001

Important! To vote in the next election, you **must** mail or deliver this card at least **15 days** before the next election. New voters who register by mail may have to show their ID at the polling place the first time they vote.

Optional

A. Check here if you can be a poll worker.
(If bilingual, indicate language: _____)

Check here if you can provide a polling place on election day.

B. Your ethnicity/race: _____

C. Check your language preference: English Spanish
Español

Chinese Vietnamese Korean Tagalog Japanese
中文 Việt ngữ 한국어 日本語

Hindi Khmer Thai
हिंदी ខ្មែរ ไทย

Did someone help you fill out or deliver this form?

If yes, the person who helped you must fill out and sign both parts of this green box.

Signature

Month / Day / Year

Name, address, and tel.: _____

15 To receive a vote-by-mail ballot in all elections, initial here: _____.

16 If you were registered to vote before, fill out below:

First name _____ Middle initial _____ Last name _____

Previous address where you were registered _____ City _____

State _____ Zip _____ Previous county _____ Previous political party preference (if any) _____

17 Are you a U.S. citizen? Yes No

Will you be 18 or older by the next election? Yes No

A "No" answer to either question means you CANNOT register to vote.

18 Read and sign below.

I am a U.S. citizen and will be at least 18 years old on election day. I am not in prison, on parole, serving a state prison sentence in county jail, serving a sentence for a felony pursuant to subdivision (h) of Penal Code section 1170, or on post release community supervision. I understand that it is a crime to intentionally provide incorrect information on this form. I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Voter Signature _____ Date Signed: Month Day Year

59 BZ 901140 170001

Important! To vote in the next election, you must mail or deliver this card at least 15 days before the next election. New voters who register by mail may have to show their ID at the polling place the first time they vote.

Tear here and fold. Moisten edge to seal. Do not staple or tape. The bottom part is your receipt. Keep it until you receive a Voter Notification Card in the mail.

As a registered voter, you may vote for any candidate for state or congressional office, regardless of the party preference or lack of party preference disclosed by you or the candidate.

Optional

- A. Check here if you can be a poll worker. (If bilingual, indicate language: _____)
- Check here if you can provide a polling place on election day.
- B. Your ethnicity/race: _____
- C. Check your language preference: English Spanish Español
- Chinese 中文 Vietnamese Việt ngữ Korean 한국어 Tagalog Japanese 日本語
- Hindi हिंदी Khmer ខ្មែរ Thai ไทย

Did someone help you fill out or deliver this form?

If yes, the person who helped you must fill out and sign both parts of this green box.

Signature _____ / _____ / _____
Month Day Year

Name, address, and tel.: _____

Org. name and tel. (if any): _____

(This part is the voter's receipt.)

Signature _____ / _____ / _____
Month Day Year

Name, address, and tel.: _____

Org. name and tel. (if any): _____

The law protects your voter registration information against commercial use. Report any problems to the Secretary of State's Voter Hotline: (800) 345-8683.

Questions, problems or to report fraud:

Contact the Secretary of State.
Call: (800) 345-VOTE (8683)
Email: elections@sos.ca.gov
Web site: www.sos.ca.gov

Or contact your county elections office.



59 BZ 901140

EXHIBIT D

ELECTION RESULTS

Want to see election results as they come in?
Get up-to-the-minute vote counts during statewide
elections at vote.sos.ca.gov or on Twitter by
following @CASOSvote.

VOTER INFORMATION IN 10 LANGUAGES

Visit www.sos.ca.gov/elections/new-voter or call
one of the toll-free voter hotline numbers below.

English.....	(800) 345-VOTE (8683)
Español / Spanish	(800) 232-VOTA (8682)
中文 / Chinese	(800) 339-2857
हिंदी / Hindi	(888) 345-2692
日本語 / Japanese	(800) 339-2865
ខ្មែរ / Khmer.....	(888) 345-4917
한국어 / Korean	(866) 575-1558
Tagalog.....	(800) 339-2957
ภาษาไทย / Thai.....	(855) 345-3933
Việt ngữ / Vietnamese.....	(800) 339-8163
TTY / TDD	(800) 833-8683



VOTE IN 2014!

- **June 3**
Direct Primary Election
- **November 4**
General Election

**Polls are open from
7:00 a.m. to 8:00 p.m. on Election Day**

MY VOICE. MY CHOICE.

MYVOTE

California Secretary of State

www.sos.ca.gov

(800) 345-VOTE (8683)

June 3 Direct Primary Election

Register to vote by: **May 19**

Request a mail-in ballot by: **May 27**

Return mail-in ballot by: **8:00 p.m. June 3**

REGISTER TO VOTE

To register to vote in California, you must be:

- A United States citizen;
- A resident of California;
- 18 years of age or older on Election Day;
- Not in prison, on parole, serving a state prison sentence in county jail, serving a sentence for a felony pursuant to subdivision (h) of Penal Code section 1170, or on post release community supervision; and
- Not found by a court to be mentally incompetent.



RegisterToVote.ca.gov

Voter registration is easy. You can apply online at RegisterToVote.ca.gov or find an application at post offices, libraries and some government offices. In most cases you must register at least 15 days before Election Day to be eligible to vote in that election.

You must re-register to vote if you move, or change your name or political party preference.

BALLOT INFORMATION

Registered voters receive the Secretary of State's Official Voter Information Guide in the mail a few weeks before Election Day. County elections offices mail a sample ballot booklet to voters. These nonpartisan guides include information about ballot measures, candidates, voting rights and more.

 OSP 13 132228

November 4 General Election

Register to vote by: **October 20**

Request a mail-in ballot by: **October 28**

Return mail-in ballot by: **8:00 p.m. November 4**

VOTE BY MAIL

Any registered voter can vote by mail in California. Fill out the vote-by-mail ballot application in your sample ballot booklet, find one at www.sos.ca.gov, or contact your county elections office. Your completed application must arrive at your county elections office at least seven days before Election Day.

Mail your voted ballot a few days before Election Day. You may also deliver your voted ballot to your county elections office or to any polling place in your county. All ballots must be received by 8:00 p.m. on Election Day. Postmarks do not count.

PROVISIONAL VOTING

Even if your name is not on the voter list at the polling place, you have the right to vote with a provisional ballot in the county where you are registered to vote. Your provisional ballot will be counted only after the elections official has confirmed you are a registered voter and you did not vote anywhere else in that election. The poll worker can give you information about how to check if your provisional ballot was counted and, if it was not counted, the reason why.

FIND YOUR POLLING PLACE

Your polling place location may change between elections. Check the back of your county sample ballot booklet for the location of your polling place. You can also find your polling place by calling your county elections office or the Secretary of State's voter hotline at (800) 345-8683, or visit www.sos.ca.gov.

EXHIBIT E



OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA ZIEGLER
COUNTY COUNSEL

January 21, 2014

Mr. Michael Risher
39 Drumm Street
San Francisco, CA 94111

VIA U.S. MAIL

RE: Public Records Request RE Secretary of State CC/ROV Memorandum # 11134

Dear Mr. Risher:

I write on behalf of my client, the Registrar of Voters ("ROV"), in response to your Public Records Act request. My client follows the Secretary of State CC/ROV Memorandum # 11134 that you reference in your letter, dated January 10, 2014, and does not have any other internal policy separate from the Secretary of State's Memorandum. At this point, my client cannot speculate on how it would treat a future, non-existent memorandum or policy change from the Secretary of State.

Please feel free to contact me if you need more information.

Very truly yours,
Donna Ziegler
County Counsel

By 
Raymond S. Lara
Senior Deputy County Counsel

EXHIBIT F



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA

1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 653-7244 | Fax (916) 653-4620 | www.sos.ca.gov

January 13, 2014

Mr. Michael T. Risher
Staff Attorney
ACLU Northern California
39 Drumm Street
San Francisco, CA 94111

Ms. Meredith DeSautels
Staff Attorney, Racial Justice
Lawyers' Committee for Civil Rights of the
San Francisco Bay Area
[No street address provided]

Via E-Mail Only c/o clamprecht@aclunc.org

Dear Mr. Risher and Ms. DeSautels:

I am responding to your letter dated December 17, 2013. In your letter, you made the following requests:

On behalf of All of Us or None and the League of Women Voters of California, we write to ask that your office change its position that people sentenced pursuant to the Criminal Justice Realignment Act and those placed on Post-release Community Supervision ("PRCS") are ineligible to vote. We request that you withdraw your December 5, 2011 memorandum to county officials wherein you advised them that these individuals are ineligible to vote and revise your voter registration and information materials accordingly. [Fn. omitted.]

Withdrawing my memorandum issued to county elections officials on December 5, 2011, would be a misrepresentation of the law. I continue to believe my reading of the law to be correct and based on denials by the First District Court of Appeal and the California Supreme Court of writ petitions filed by your clients, it appears those two courts of law agree with my interpretation.

Sincerely,

A handwritten signature in black ink that reads "Debra Bowen".

Debra Bowen
Secretary of State

DB:elg:lf:op